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No. _____

In The
Supreme Court of the United States

AMERICAN GENERAL FINANCE, INC.,

Petitioner,

v.

RICHARD W. PASCHEN and DOREEN A. PASCHEN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Debtors Richard W. Paschen and Doreen A. Paschen ("Debtors") are entitled, pursuant to 11 U.S.C. § 1322(c)(2), to bifurcation and cramdown of a portion of the second-in-priority lien of Petitioner American General Finance, Inc. ("American General") in real property that is the Debtor's principal residence, where the last payment on the original payment schedule for American General's claim is due before the date on which the final payment under the plan is due, when such lien is secured only by a security interest in real property that is the Debtors' principal residence in accordance with the Supreme Court case of *Nobleman v. American Savings Bank*, 508 U.S. 324 (1993).

PARTIES TO THE PROCEEDING

The caption already contains all parties in this civil action.

CORPORATE DISCLOSURE STATEMENT

COMES NOW American General Finance, Inc. ("American General"), a Delaware corporation, the Petitioner in the above-styled civil action, and pursuant to Rule 29.6. of the Rules of the U.S. Supreme Court hereby certifies that it is the wholly owned subsidiary of American General Finance Corporation, which is the wholly-owned subsidiary of American General Finance, Inc. (Indiana), which is the wholly-owned subsidiary of American General Corporation, which is the wholly owned subsidiary of American International Group, Inc., a publicly held company. American General has no subsidiaries that are not wholly owned by it.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner American General Finance, Inc. respectfully petitions this Court for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 296 F.3d 1203. It is reprinted in the Appendix attached hereto at page App. 1. The opinion of the district court is not reported. It is reprinted at page App. 14. The opinion of the bankruptcy court is not reported. It is reprinted at page App. 16.

JURISDICTION

American General appealed to the United States District Court for the Middle District of Georgia from an Order confirming the Chapter 13 plan of Debtors Richard W. Paschen and Doreen A. Paschen (the "Debtors"), dated and entered on or about September 6, 2000, and a Memorandum Opinion dated and entered on or about August 10, 2000. The Order and Memorandum Opinion were entered by the Honorable John T. Laney, III, Judge of the United States Bankruptcy Court for the Middle District of Georgia, Columbus Division. The Order and Memorandum Opinion allow the Debtors, through their Chapter 13 plan, to bifurcate and cramdown American General's lien, which is secured only by the Debtors' principal residence. The Honorable Hugh Lawson, Judge of the United States District Court for the Middle District

of Georgia, Columbus Division, affirmed the Bankruptcy Court's decision by order dated October 15, 2001. This Court has jurisdiction over this appeal pursuant to 28 U.S.C. § 158(d) in that a final decision, judgment, order, or decree from the District Court may be appealed to the Court of Appeals that includes the judicial district of the judge entering the order. On July 10, 2002, the 11th Circuit issued an opinion affirming the U.S. District Court. Pursuant to Supreme Court Rule 13.3, this Petition has been filed within 90 days of the Circuit Court ruling. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

11 U.S.C. § 506(a) provides in relevant part as follows:

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and the proposed disposition of use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 1322(b)(2) provides in relevant part as follows:

> Subject to subsections (a) and (c) of this section, the plan may

* * *

(2) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the Debtors' principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;. . . .

11 U.S.C. § 1322(c)(2) provides in relevant part as follows:

(a) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law

* * *

(2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1325(a)(5) provides in relevant part as follows:

(a) Except as provided in subsection (b), the court shall confirm a plan if –

* * *

(5) with respect to each allowed secured claim provided for by the plan –

(A) the holder of such claim has accepted the plan;

(B) (i) the plan provides that the holder of such claim retain the lien securing the claim; and

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; or

(C) the debtor surrenders the property securing such claim to such holder;

STATEMENT OF THE CASE

I. Basis of Federal Jurisdiction Below

American General appealed to the United States District Court for the Middle District of Georgia from a final order entered by the Honorable John T. Laney, III, Judge of the United States Bankruptcy Court for the Middle District of Georgia, confirming the Debtors' Chapter 13 plan and allowing the lien of American General on the residence of Debtors Tyrone H. and Darlene H. Dickerson ("Debtors") to be bifurcated and partially stripped off through the Debtors' Chapter 13 Plan. The Honorable Hugh Lawson, Judge of the United States District Court for the Middle District of Georgia, affirmed the decision of the bankruptcy court. American General appealed the district court's decision to the United States Court of Appeals for the Eleventh Circuit. The appeal invoked the United States Court of Appeals' jurisdiction under 28 U.S.C. § 158 to entertain appeals of judgments that are final decisions of the United States District Court,

reversing final decisions of the United States Bankruptcy Court.

II. Course of Proceedings and Disposition in the Courts Below

The Debtors filed their Chapter 13 bankruptcy petition on December 14, 1999. On January 3, 2000, American General filed a secured claim for the amount of the second mortgage it holds on the Debtors' principal residence. The Debtors filed their proposed Chapter 13 plan on or about January 18, 2000. On February 18, 2000, American General filed a Motion to Deny Confirmation of the Debtors' Chapter 13 plan on the grounds that the plan did not, as the law requires, provide for payment in full of American General's claim. In response to American General's Motion, the Bankruptcy Court issued a Memorandum Opinion on August 10, 2000, ruling in the Debtors' favor on the issue of the plan's treatment of American General's claim. On September 6, 2000, the Bankruptcy Court entered an Order confirming the Debtors' Chapter 13 plan.

American General filed its Notice of Appeal to the United States District Court for the Middle District of Georgia, Columbus Division, on September 15, 2000. Following oral argument, on October 15, 2001, the Honorable Hugh Lawson of that court issued an Order affirming the decision of the Bankruptcy Court. Judgment was entered for Appellees/Debtors on October 18, 2001. Following Judge Lawson's Order, which disposed of the matter at the District Court level, American General timely filed its Notice of Appeal to the 11th Circuit Court of Appeals on October 23, 2001. The Honorable Wilson, the Honorable Hill, and the Honorable Alarcon of the 11th Circuit Court

of Appeals entered judgment on July 10, 2002, affirming the district court's order.

III. Statement of Facts

The Debtors completed an application for a second mortgage from American General on August 25, 1999. Although the Debtors maintain that they did not read the application documents, they have admitted that they are each able to read and were not prevented from doing so. In their loan application, the Debtors represented the value of their home to be $70,000. *Id.* At that time, Market Street Mortgage held an outstanding first mortgage on the Debtors' primary residence in the principal amount of $55,629. The $70,000 valuation therefore reflected equity of approximately $14,000. Based upon the valuation provided by the Debtors and American General's confirmation of this valuation as reasonable, American General approved a second mortgage in the amount of $12,377.08. The mortgage was secured solely by a duly-perfected lien against the Debtors' primary residence.

On December 14, 1999, the Debtors filed a petition for relief under Chapter 13. American General filed a Proof of Claim with the Bankruptcy Court in the principal amount of $11,392.04. Neither the Debtors nor the trustee objected to American General's Proof of Claim, which was filed as a secured claim. The Debtors proposed a Chapter 13 plan that modified American General's claim by stripping the lien from $11,392.04 to $2,752.00, which was the amount of equity they claimed existed in their primary residence to secure American General's lien after subtracting the amount of their primary mortgage. The Debtors based this

figure on an appraisal of their primary residence, submitted with their Chapter 13 proceeding, that reflects the value of their primary residence, at or around the time of their application for a second mortgage from American General, as having been $59,000.

American General filed a Motion to Deny Confirmation of the plan on the grounds that the plan was not proposed in good faith because it failed to value American General's claim properly. The foundation of American General's objection to the Debtors' plan was American General's assertion that applicable law prohibits the Debtors from bifurcating and cramming down American General's lien, as this lien is secured only by a security interest in the Debtors' primary residence. At the confirmation hearing on August 25, 2000, the plan was ultimately modified such that American General was to be paid the gross sum of $6,000, including interest to be calculated at twelve percent. The judge found that the value of the Debtors' home did not exceed $62,000 and confirmed the Debtors' plan, as modified. In so ordering, the court denied American General's Motion to Deny Confirmation. Following the court's order, American General timely filed a Notice of Appeal to the United States District Court for the Middle District of Georgia, Columbus Division. After the District Court affirmed the decision of the Bankruptcy Court, American General timely filed a Notice of Appeal to the 11th Circuit Court of Appeals, which affirmed the District Court's decision.

REASONS FOR GRANTING THE PETITION

The issue presented by this case involves "lien stripping" in Chapter 13 cases and the interplay between 11 U.S.C. §§ 506(a), 1322(b)(2), 1322(c)(2) and 1325(a)(5). There is now a split of authority between the 11th Circuit's decision in this case and the decision of the 4th Circuit in *Witt v. United Companies Lending Corp.* (*In re Witt*), 113 F.3d 508 (4th Cir. 1997). Consequently, this honorable Court should take this opportunity to re-visit the lien stripping issue associated with bankruptcies, which was last addressed by this Court in 1993 in *Nobelman v. American Savings Bank*, 508 U.S. 324 (1993). That decision has resulted in an extremely wide array of cases with analyses that are as diverse as the judges rendering an opinion and this honorable Court should take this opportunity to bring some uniformity back to the interpretation of the bankruptcy code as it relates to this extremely important and far-reaching issue.

The U.S. Supreme Court's landmark decision regarding bifurcation and cramdown of claims under § 1322(b)(2) is *Nobelman v. American Savings Bank*, 508 U.S. 324 (1993). In *Nobelman*, the Supreme Court held that an undersecured claim that is secured only by a security interest in a debtor's principal residence may not be bifurcated under 11 U.S.C. § 506(a) and crammed down. *Id.* at 332. The Court held that the statute's use of the language "claim secured by" rather than the term of art "secured claim" demonstrated that the statute was intended to protect both the secured and unsecured portions of a claim secured only by a security interest in the debtor's principal residence. *Id.* at 331.

Justice Thomas, in writing for a unanimous Court, held that the focus of § 1322(b)(2) was not merely the protection of secured claims, but rather the protection of the rights of those who hold secured claims. *Id.* at 328-29. These rights, the Court held, were "bargained for by the mortgagor and the mortgagee" and are protected from modification by § 1322(b)(2) in a way that is not limited by the value of the secured claim. *Id.* at 329-30. Thus, under *Nobelman*, a "claim secured only by a security interest in real property that is the debtor's principal residence" may not be crammed down pursuant to § 506(a), even if the claim is undersecured; that is, even if there is insufficient equity in the real property to secure the mortgagor's lien. *Id.* at 332.

Understanding the background provided by § 1322(b)(2), the critical question in the case at bar is the effect of § 1322(c)(2) on American General's claim against the Debtors. Section (c)(2) applies to this matter because (1) American General's interest is secured only by a security interest in real property that is the Debtors' principal residence and (2) the last payment on the original payment schedule for the loan is due before the date on which the final payment under the Debtors' Chapter 13 plan is due. The parties disagree as to whether the "modification" to which the section refers allows merely for the alteration of payments made on a claim or whether it allows for the claim itself to be altered.

The better argument is that § 1322(c)(2)'s permitted "modification" applies only to the schedule of payments made on a claim. This is the view adopted in the case of *Witt v. United Companies Lending Corp.* (*In re Witt*), 113 F.3d 508 (4th Cir. 1997), the highest court to consider this issue to date (and the only Circuit panel addressing this

issue to date). The *Witt* court held that § 1322(c)(2) applies only to ***payments*** made on a claim (not the claim itself) and that *Nobelman's* prohibition on the bifurcation of undersecured claims secured only by a lien on the debtor's principal residence is therefore still in effect. Under the *Witt* court's holding, American General's lien thus could not be bifurcated.

The Debtors take the position, however, that the modification language in § 1322(c)(2) applies to the claim itself. Under the Debtors' argument, therefore, bifurcating a claim by dividing it into secured and unsecured parts is permissible under the statute. *Id.* Thus, the Debtors argue, any unsecured portion of American General's claim may be crammed down under their Chapter 13 plan. *Id.* The Debtors' position has been endorsed by a number of lower courts. *See, e.g., First Union Mortgage Corp. v. Eubanks* (*In re Eubanks*), 219 B.R. 468 (B.A.P. 6th Cir. 1998); *In re Sexton*, 230 B.R. 346 (Bankr. E.D. Tenn. 1998); *In re Reeves*, 221 B.R. 756 (Bankr. C.D. Ill. 1998); *In re Mattson*, 210 B.R. 157 (Bankr. D. Minn. 1997); *In re Young*, 199 B.R. 643 (Bankr. E.D. Tenn. 1996). As explained below, however, the Debtors' argument and the cases that support it are flawed as a matter of both law and public policy. In addition, the *Mattson* and *Sexton* cases are distinguishable on their facts from the case at bar, as each of those cases involved a claim that the debtor asserted to be completely unsecured.

(i) Application of statutory construction supports a finding that only payments may be modified under § 1322(c)(2).

"The starting point for all statutory interpretation is the language of the statute itself." *United States v. DBB,*

Inc., 180 F.3d 1277, 1281 (11th Cir. 1999). "[Courts] will only look beyond the plain language of a statute at extrinsic materials to determine the congressional intent if: (1) the statute's language is ambiguous; (2) applying it according to its plain meaning would lead to an absurd result; or (3) there is clear evidence of contrary legislative intent." *Id.* In the present case, the language employed by 11 U.S.C. § 1322(c)(2), "payment of the claim as modified," is ambiguous. *In re Witt*, 113 F.3d at 511. As the *Witt* court held, it "cannot be determined, merely from the statute's text, whether the words 'as modified' should apply to 'payment' or to 'claim.'" *Id.*

The language of the *DBB, Inc.* case provides guidance as to the manner in which an ambiguous statute is to be interpreted. "We assume that Congress used the words in a statute as they are commonly and ordinarily understood, and we read the statute to give full effect to each of its provisions. We do not look at one word or term in isolation, but instead we look to the entire statutory context." *DBB, Inc.*, 180 F.3d at 1281 (internal citations omitted). Applying the analysis set forth by the *DBB, Inc.* court, it becomes clear that "as modified" must apply to "payment," rather than "claim." First, looking to the "entire statutory context" of the provision, the application of § 1322(c)(2) is triggered by the amount of time during which the remaining payments on a loan were to be made, according to the original payment schedule to which the parties had agreed when the loan originated. *See Witt*, 113 F.3d at 510. The section applies only to situations in which the final payments on a loan (according to the original payment schedule) would become due before the date on which the final payment under a Chapter 13 plan is due. *Id.*, *citing* § 1322(c)(2). Because the statute's reach is limited to loans

with certain payment schedules, it would seem to follow logically that the section seeks to modify payment schedules, rather than the underlying claims themselves.

Taking the *Witt* court's analysis a step further, a strong argument may be made, applying the reasoning of the Supreme Court in *Dewsnup v. Timm*, 502 U.S. 410 (1992), that a court may consider the legislative history of a provision that may alter an existing bankruptcy practice, even without first determining that the provision is ambiguous. *See* Timothy B. McCaffrey, Jr., *From Dewsnup to Nobelman to the Bankruptcy Reform Act of 1994: Did Congress Intend to Change "Pre-Amendment Law When it Enacted Section 1322(C)(2)?"*, 30 Loy. L.A. L. Rev. 841, 855 (1997). Such an approach would create "a standard for interpreting the Code similar to that described in Justice O'Connor's dissent in *United States v. Ron Pair Enterprises*." *Id.* at 856, *citing* 489 U.S. 235, 252 (1989) (O'Connor, J., dissenting). "In *Ron Pair Enterprises*, O'Connor wrote that 'bankruptcy statutes will not be deemed to have changed pre-Code law unless there is some indication that Congress thought it was effecting such a change.'" McCaffrey, *supra*, at 855, *citing* 489 U.S. at 252.

Further, "courts should disfavor interpretations of statutes that render language superfluous." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253 (1992). *See also DBB, Inc.*, 180 F.3d at 1287 (internal citations omitted) ("A statute should be interpreted so that no words shall be discarded as meaningless, redundant, or mere surplusage."). If § 1322(c)(2)'s "modification" language was meant to affect the claim itself, the word "payment" in the statute would become superfluous. *See Witt*, 113 F.3d at 512 (citing

Germain in support of its holding that allowing modification of the claim would render the statute's "reference to 'payment' . . . wholly unnecessary and superfluous"). "If Congress had intended this reading," the *Witt* court held, "there was no need for it to talk about the 'payment' of the claim. Instead, it could have simply ended § 1322(c)(2) by saying 'the plan may provide for the claim to be modified.'" *Id.* at 511-12. Instead, as the *Witt* court notes, "Congress said something else in the last clause of § 1322(c)(2), that is, 'the plan may provide for the payment of the claim as modified.'" *Id.* at 512.

Thus, as the *Witt* holding demonstrates, unless Congress intended for the term "as modified" to apply to payment, the addition of the word "payment" would be superfluous, a construction disfavored by relevant Supreme Court canons of interpretation. As a result, under the above-referenced statutory construction principles, it was improper for Judge Laney of the Bankruptcy Court to allow American General's lien to be bifurcated and stripped.

(ii) Legislative history also shows that § 1322(c)(2)'s modification applies only to payments.

While *Nobelman* protected from modification the claims of those holding mortgages on primary residences, the case of *First National Fidelity Corp. v. Perry* held, in the foreclosure context, that the payments on the claims could not be modified either. 945 F.2d 61 (3rd Cir. 1991). In *Perry*, a mortgagor obtained a foreclosure judgment against a mortgagee. *Id.* at 62. Subsequent to the entry of the foreclosure judgment, but prior to the foreclosure sale, the mortgagee filed a Chapter 13 petition. *Id.* Under the

proposed Chapter 13 plan, the debtor was to pay the foreclosure judgment over the five-year life of the plan. *Id.* The mortgagor objected to confirmation of the plan on the grounds that the proposed plan constituted an impermissible modification of the mortgagor's rights under § 1322(b)(2). *Id.*

The *Perry* court rejected the proposed plan. *Id.* at 67. In so holding, the court found that the mortgagor, having obtained a foreclosure judgment, was entitled to immediate payment of that judgment in full. *Id.* at 65. The court agreed with the mortgagor's argument that any attempt to modify the judgment or to defer payment of the judgment over the life of the plan would constitute an impermissible modification of the mortgagor's rights under § 1322(b)(2). *Id.* Thus, *Perry* stood for the proposition that payment of a foreclosure judgment obtained following default on a loan secured only by a debtor's principal residence could not be modified or deferred.

Cases adopting the position advocated by the Debtors have described the legislative history surrounding the enactment of § 1322(c)(2) as "puzzling" and "inconclusive." *In re Young*, 199 B.R. 643, 652-53 (E.D. Tenn. 1996) (holding that, "[a]t a minimum, the legislative history is inconclusive"); *In re Jones*, 188 B.R. 281, 282 (D. Or. 1995) (holding that "[t]he legislative history of § 1322(c)(2) is puzzling"). Properly understood, however, the legislative history is neither inconclusive nor puzzling, but instead clearly shows that § 1322(c)(2) was enacted to overrule *Perry* and *not Nobelman*. "It is firmly entrenched that Congress is presumed to enact legislation with knowledge of the law; that is, with knowledge of the interpretation that courts have given to an existing statute." *United States v. Langley*, 62 F.3d 602, 605 (4th Cir. 1995).

As a result, "absent a clear manifestation of contrary intent, a newly-enacted or revised statute is presumed to be harmonious with existing law and its judicial construction." *Id.* (Internal citations omitted). *See also First Union Mortgage Corp. v. Eubanks (In re Eubanks)*, 219 B.R. 468 (B.A.P. 6th Cir. 1998) (Stosberg, J., dissenting) (quoting *United States v. Langley*, 62 F.3d at 605). *Accord Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (in the Chapter 7 context, discussing the relationship between the Bankruptcy code and judge-made law and holding that "this Court has been reluctant to accept arguments that would interpret the Code, however vague the particular language under construction might be, to effect a major change in pre-Code practice that is not the subject of at least some discussion in the legislative history").

As is set forth above, the existing law at the time of Congress' enactment of § 1322(c)(2) held that payments on a home mortgage, at least in the foreclosure context, could not be modified under § 1322(b)(2). *Perry*, 945 F.2d 61. In addition, existing law held that undersecured home mortgages could not be bifurcated and crammed down. *Nobelman*, 508 U.S. 324. H.R. Rep. 103-835, the bill that eventually became the Bankruptcy Reform Act of 1994, states that "the changes made by this section . . . would also overrule the result in *First National Fidelity Corp. v. Perry* (citation omitted) with respect to mortgages on which the last payment on the original payment schedule is due before the date on which the final payment under the plan is due." As the court in *Witt* noted, "[H.R. Rep. 103-835] makes no mention of the *Nobelman* decision or of any intention to overrule that decision." 113 F.3d at 513. Indeed, the cases that support the Debtors' position acknowledge this point. *See, e.g., In re Young*, 199 B.R. at

652-53 (acknowledging that "the legislative history to § 1322(c)(2) gives no indication that Congress intended to reverse any aspect of *Nobelman*, nor is bifurcation or 'cramdown' even addressed"). In addition, "[a]lthough the Report directly refers to forty cases, including three Supreme Court cases, that the Act was intended to overrule, *Nobelman* was not one of them." *Witt*, 113 F.3d at 513.

There is simply no "clear manifestation" that Congress intended to overrule *Nobelman*. Indeed, the legislative history militates strongly in favor of the opposite conclusion. Other versions of the proposed legislation that Congress *declined to pass into law* included legislative history indicating an intent to overrule *Nobelman*. *See generally First Union Mortgage Corp. v. Eubanks* (*In re Eubanks*), 219 B.R. 468, 474-477 (B.A.P. 6th Cir. 1998) (discussing the evolution of § 1322(c)(2), including several bills, ultimately rejected, that expressly provided for the bifurcation and cramdown of undersecured junior security interests). This earlier legislative history adds further strength to the assumption that Congress (1) was aware of the *Nobelman* precedent and (2) did not, in the version of the bill that was ultimately passed into law, intend to overrule *Nobelman*.

The existence of legislative history that *Perry* was to be overruled and the absence of history regarding overruling *Nobelman* supports the finding that § 1322(c)(2) was intended to allow for modification of "payments" on a claim, but not of the claim itself. Surely if Congress saw fit to mention a Third Circuit case that it intended to overrule, it would have mentioned a Supreme Court decision to which it intended to give the same treatment. "If Congress intended such a revolutionary change in the law, . . . it

would have made clear its intention to do so." *Witt*, 113 F.3d at 513 (citing *Langley*, 62 F.3d at 606). However, there is no hint of any congressional intent to overrule the Supreme Court decision of *Nobelman* in the legislative history of 11 U.S.C. § 1322(c)(2).

Indeed, Congress if anything strengthened *Nobelman* by overruling *Perry*, which cited a case containing reasoning expressly rejected by the *Nobelman* Court. "The court in *Perry* stated in dicta that it would have been permissible to bifurcate [the Mortgagor's] claim had it been undersecured." McCaffrey, *supra*, at 860. In this portion of its holding, the *Perry* court relied upon the case of *Wilson v. Commonwealth Mortgage Corp.*, 895 F.2d 123 (3d Cir. 1990), the holding of which was expressly rejected by the *Nobelman* Court. *See Nobelman*, 508 U.S. at 327. Thus, "[b]y overruling *Perry*, albeit on other grounds, Congress was indirectly supporting the Court's decision in *Nobelman*." McCaffrey, *supra*, at 860. Consequently, when taking into consideration the legislative history of § 1322(c)(2), it is once again clear that this Court should not allow American General's lien to be bifurcated and stripped under the facts of this case.

(iii) Public policy dictates that only payments may be modified.

"The purpose of Chapter 13 is to enable an individual, under court supervision and protection, to develop and perform under a plan for the repayment of his debts over an extended period." *First National Fidelity Corp v. Perry*, 945 F.2d 61, 63 (3d Cir. 1991) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 118 (1977)). To achieve this purpose, "Chapter 13 generally allows modification of creditors'

claims to allow debtors the necessary time to repay their debts." *Id.* However, special protections from modifications were afforded to home mortgage lenders because "'Congress had to face the reality that . . . [e]very protection Congress might grant a homeowner at the expense of the holders of security interests on these homes would decrease the attractiveness of home mortgages as investment opportunities' and the availability of home mortgage financing." *Id.* at 63-64, *citing In re Glenn*, 760 F.2d 1428, 1434 (6th Cir. 1985). Thus, the protection of debtors and their ability to find "a fresh start in life, after they have made a good-faith attempt to pay what they can," must be balanced with "encourag[ing] the flow of capital into the home lending market." *Nobelman*, 508 U.S. at 332 (Stevens, J., concurring).

"Permitting the bifurcation of home mortgage loans . . . could make lenders more hesitant to make such loans in the first place." *Witt*, 113 F.3d at 514. In the short-term, a broad reading of § 1322 that allows modification of claims held by a mortgagor like American General may help out debtors like the Paschens. In the long-term, however, such a policy may make it more difficult for those similarly situated to obtain second mortgage financing at all.

In addition, even without providing debtors with the ability to modify mortgage claims, such as those held by American General, under § 1322(c)(2), the section "still provides significant relief for homeowners in Chapter 13 who need more flexibility." *Witt*, 113 F.3d at 514. Even this more conservative reading of § 1322(c)(2) benefits debtors by allowing them to pay the remaining part of certain mortgage debt over the life of a Chapter 13 plan. *Id.* Section 1322(c)(2) "enables Debtors to retain their homes

for a few additional years and may enable them to sell their homes at a more favorable economic time, obtain replacement financing, or hope that their economic circumstances change for the better so that they may pay off the mortgage debt." *In re Chang*, 185 B.R. 50, 532 (Bankr. N.D. Ill. 1995).

Thus, while it is clear that payments may be modified so a debtor has a better chance to save his or her home, in the words of the *Witt* court, "[w]e are certain . . . that Congress did not intend to permit bifurcation as yet another tool of restructuring this category of debt." 113 F.3d at 514. As it is undisputed that American General's lien is secured only by a security interest in real property that is the debtor's principal residence, public policy is clearly in favor of a result wherein American General's lien would not be bifurcated and stripped, and the 11th Circuit Court's decision to the contrary should be reversed.

CONCLUSION

The issue American General presented in this petition for certiorari demonstrates the importance of claim valuation in the context of Chapter 13 petitions involving junior residential liens that are, or may be, stripped and crammed down. This hotly contested issue represents an important and timely opportunity for this Court to provide much-needed direction.

WHEREFORE, American General respectfully requests that its Petition for Writ of Certiorari be granted.

Respectfully submitted this 8th day of October, 2002.

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APPENDIX

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 01-16353

D. C. Docket No. 00-00212-CV-1-HL-4

In Re: RICHARD W. PASCHEN,

Debtor.

AMERICAN GENERAL FINANCE, INC.,

Plaintiff-Appellant,

versus

RICHARD W. PASCHEN,
DOREEN A. PASCHEN,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia

(Filed July 10, 2002)

Before WILSON, HILL and ALARCON*, Circuit Judges.

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* Honorable Arthur L. Alarcon, U.S. Circuit Judge for the Ninth Circuit, sitting by designation.

WILSON, Circuit Judge:

This case presents an issue of first impression in this Circuit: Does 11 U.S.C. § 1322(c)(2) permit Chapter 13 debtors to bifurcate undersecured, short-term[1] home mortgages into secured and unsecured claims, with the unsecured claim subject to "cramdown" pursuant to 11 U.S.C. § 1325(a)(5)? The bankruptcy court, in confirming Richard and Doreen Paschen's (Debtors') Chapter 13 plan, held that § 1322(c)(2) did indeed permit Debtors to modify undersecured, short-term home mortgages through bifurcation and "cramdown." The district court affirmed the bankruptcy court's confirmation of Debtors' Chapter 13 plan. For the foregoing reasons, we affirm.

I.

Debtors purchased a home in Columbus, Georgia in May of 1997. Two years later, Debtors encountered serious financial difficulties. Needing an immediate infusion of cash to pay off their debts, Debtors sought to borrow money from American General Finance, Inc. (AGF), a financial services corporation with a specialty in consumer finance. In August of 1999 AGF approved a loan to Debtors for $12,377.08, secured by the equity Debtors held in their home.

In December of 1999 Debtors' financial situation became untenable, and they filed for protection from their

[1] The short-term mortgages covered by the statute are those in which "the last payment on the original payment schedule . . . is due before the date on which the final payment under the [Chapter 13] plan is due." 11 U.S.C. § 1322(c)(2).

creditors under Chapter 13. AGF filed a proof of claim with the bankruptcy court in the amount of $11,392. Debtors then submitted a Chapter 13 plan, which proposed modifying AGF's claim by bifurcating AGF's loan into its secured and unsecured components, with only the secured portion to be paid back in a series of monthly installments. Debtors valued the secured component at $2752, which Debtors claimed reflected the actual amount of equity they then held in their home.

AGF filed a motion to deny confirmation of the plan, arguing that the plan failed to assess the value of AGF's secured debt properly. AGF further contended that the applicable law prevented Debtors from bifurcating AGF's loan into secured and unsecured parts and cramming down the unsecured part, as AGF's lien was secured by an interest in Debtors' primary residence. Such loans, AGF argued, are excepted from the general rule permitting modification of secured claims pursuant to a Chapter 13 plan. *See id.* § 1322(b)(2).

In a written opinion dated August 10, 2000, the United States Bankruptcy Court for the Middle District of Georgia rejected AGF's legal argument that claims involving short-term loans secured by liens against a debtor's primary residence could not be bifurcated into secured and unsecured parts, with the unsecured part crammed down, in a Chapter 13 proceeding. The court found that § 1322(c)(2) explicitly permitted the bifurcation and "cramdown" of claims involving short-term mortgages such as the one at issue in this case. The August 10th opinion was incorporated into the court's ultimate findings of fact and conclusions of law, which, pursuant to Bankruptcy Rule 7052, were announced from the bench after a confirmation hearing on August 25, 2000. The court confirmed a

modified version of Debtors' Chapter 13 plan, which valued AGF's lien at six thousand dollars and required Debtors to repay that amount at twelve percent interest over a sixty-month period.

AGF appealed the bankruptcy court's confirmation of Debtors' plan to the United States District Court for the Middle District of Georgia, which rejected AGF's arguments and affirmed the bankruptcy court's decision. AGF filed a timely notice of appeal with this Court.

II.

We review both the bankruptcy court's and the district court's factual findings under the clearly erroneous standard. *Gen. Trading, Inc. v. Yale Materials Handling Corp.*, 119 F.3d 1485, 1494 (11th Cir. 1997). The legal determinations of both of these courts are subject to de novo review.[2] *Id.*

Chapter 13 debtors enjoy "broad power to modify the rights of the holders of secured claims." *In re Eubanks*, 219 B.R. 468, 470 (B.A.P. 6th Cir. 1998). The manner in which secured claims may be modified in an acceptable Chapter 13 plan is governed by § 1325(a)(5). Section 1325(a)(5) specifies the conditions under which Chapter 13 plans

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[2] While the bulk of this opinion is dedicated to AGF's legal claim that the lower courts erred in construing § 1322(c)(2), AGF also contends that the bankruptcy court's confirmation ruling "is based on a misapplication of several basic principles of contract law." These errors are alleged to have caused the court to value AGF's lien improperly. After reviewing and considering the briefs, the record, and the applicable law, we find AGF's contention to be without merit.

must address "allowed secured claim[s]" if the plans are to be confirmed, essentially by ensuring that creditors receive appropriate value for each of their secured claims. The phrase "allowed secured claim[s]" is a reference to 11 U.S.C. § 506(a), which has been interpreted as providing that "a claim is secured only to the extent of the value of the property on which the lien is fixed; the remainder of that claim is considered unsecured." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989). Thus, taken together, these provisions permit the bifurcation of an undersecured claim into its secured and unsecured parts, with creditors only assured of receiving full value for the secured portion of the claim. Section 1325(a)(5) is recognized as the source of a Chapter 13 debtor's authority to bifurcate secured claims and to "strip down" the value of the claim to an amount equal to the value of the collateral. *In re Young*, 199 B.R. 643, 647 (Bankr. E.D. Tenn. 1996) ("The very essence of a § 1325(a)(5) modification is the write down or 'cramdown' of a secured claim to the value of the collateral securing the debt.").

In the instant case, Debtors' proposed plan included an assertion that AGF's debt was undersecured, because the value of Debtors' collateral (equity in their home) was substantially exceeded by the value of the debt. Relying upon the provisions of § 1325(a)(5), Debtors sought to bifurcate AGF's claim, with the secured portion paid back in monthly installments and the unsecured component crammed down. While the bankruptcy court disagreed with Debtors' valuation of AGF's collateral, it agreed with the premise of Debtors' proposal and permitted AGF's claim to be bifurcated, with only the value of the secured portion returned to AGF.

AGF argues that another provision of the Bankruptcy Code precludes the modification of its claim. According to AGF, § 1322(b)(2) expressly prohibits the modification of any claim in a Chapter 13 proceeding "secured only by a security interest in real property that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2). The Supreme Court has interpreted this provision to exclude mortgages against a debtor's principal residence from the general rule permitting modification of secured claims in Chapter 13 proceedings. *Nobelman v. Am. Savings Bank,* 508 U.S. 324, 331-32 (1993), *superseded by statute as stated in In re Escue,* 184 B.R. 287 (Bankr. M.D. Tenn. 1995). In the instant case, AGF holds a note secured solely by a lien on the real property that constitutes Debtors' principal residence. Hence, AGF contends that its claim cannot be modified pursuant to § 1325(a)(5).

Debtors rely upon what they term "an exception to the section 1322(b)(2) exception" to support their contention that AGF's claim should be subject to modification. The relevant provision is found at § 1322(c)(2), which provides as follows:

> Notwithstanding subsection (b)(2) and applicable nonbankruptcy law –
>
> . . . .
>
> (2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1322(c)(2). Debtors contend that this provision unambiguously provides that short-term mortgages that mature prior to the final payment on a Chapter 13 plan are subject to modification, notwithstanding the general prohibition on modification of claims secured by an interest in a debtor's primary residence found in § 1322(b)(2). Debtors note that the debt at issue here is a short-term mortgage that matures prior to the completion of the proposed Chapter 13 plan and thus argue that their debt to AGF is subject to modification. AGF rejects this reading of § 1322(c)(2); argues that the language of § 1322(c)(2) is ambiguous; and avers that the legislative history indicates that Congress did not intend for § 1322(c)(2) to permit the modification of claims secured by short-term mortgages, but rather intended to permit only the schedule of payments for those claims to be modified. Our task in this case is to evaluate these competing views of § 1322(c)(2) to determine which view best effects the will of Congress.

III.

"In construing a statute we must begin, and often should end as well, with the language of the statute itself." *United States v. Steele,* 147 F.3d 1316, 1318 (11th Cir. 1998) (en banc) (internal quotation marks omitted). When the language of a statute is unambiguous, we need go no further, because we must presume that Congress "said what it meant and meant what it said." *Id.* "The plain meaning of legislation should be conclusive, except in the rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Ron Pair Enters., Inc.,* 489 U.S. at 242 (alteration in original) (internal quotation marks omitted). The import of these authorities is that we need

not resort to extrinsic evidence, such as legislative history, to discern a statute's meaning if the statute's language is unambiguous.

In the instant case, the plain language of the statute indicates a clear congressional intent to except certain short-term mortgages from the general rule prohibiting the modification of claims secured only by an interest in a debtor's primary residence in a Chapter 13 proceeding. Debtors' interpretation of the statute is the correct one. An assessment of the text of § 1322(c)(2) reflects its clarity.

The prefatory phrase "[n]otwithstanding subsection (b)(2)" is the first important indicator of congressional intent with respect to this statute. The phrase is a plain statement that subsection (b)(2)'s prohibition on the modification of loans secured only by an interest in a debtor's primary residence does not have any application to the class of claims that fall under § 1322(c)(2). This interpretation of the "[n]otwithstanding" phrase has been noted by a number of other courts charged with construing § 1322(c)(2). *See, e.g., In re Eubanks,* 219 B.R. at 470 ("The introductory phrase, '[n]otwithstanding subsection (b)(2)' clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section") (alteration in original) (internal quotation marks omitted); *In re Bagne,* 219 B.R. 272, 277 (Bankr. E.D. Cal. 1998) ("Plainly, this [prefatory] language instructs the court to disregard § 1322(b)(2)."); *In re Mattson,* 210 B.R. 157, 160 (Bankr. D. Minn. 1997) (holding that the prefatory phrase meant that "[w]e are therefore to ignore subsection (b)(2), at least to the extent that it is inconsistent with the language that follows").

In addition, the reference to § 1325(a)(5) is highly relevant to our understanding of § 1322(c)(2). As we noted earlier, § 1325(a)(5) permits writing down secured claims to the value of the collateral securing the debt. *See United States v. Arnold,* 878 F.2d 925, 928 (6th Cir. 1989) ("Under [§ 1325(a)(5)], the debtor can 'cramdown' a plan repaying only the 'allowed secured claim' . . . ."); *In re Young,* 199 B.R. at 647 ("The very essence of a § 1325(a)(5) modification is the write down or 'cramdown' of a secured claim to the value of the collateral securing the debt."). The phrase "payment of the claim as modified pursuant to section 1325(a)(5)" is an explicit statement of § 1322(c)(2)'s purpose: claims that fall within its ambit are subject to bifurcation into secured and unsecured parts, with the unsecured portion subject to "cramdown" pursuant to § 1325(a)(5). *In re Eubanks,* 219 B.R. at 471-72. And the claims that fall under § 1322(c)(2) are those in which "the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due" – precisely the kind of claim at issue in this case.

AGF argues that the language of the statute is subject to more than one plausible interpretation and is thus ambiguous, requiring reference to extrinsic sources to discern congressional intent. AGF relies upon the construction of § 1322(c)(2) advanced in *In re Witt,* 113 F.3d 508 (4th Cir. 1997), to support its argument that the statute is ambiguous.

In *In re Witt,* the Fourth Circuit found § 1322(c)(2)'s critical phrase "payment of the claim as modified" ambiguous, because "[i]t [could not] be determined, merely from the statute's text, whether the words 'as modified' should

apply to 'payment' or to 'claim.'" *Id.* at 511. If the term "as modified" modifies "payment," the *Witt* court found that a mortgage covered by § 1322(c)(2) could not be bifurcated and crammed down – rather, § 1322(c)(2) merely could provide for the modification of the schedule of payments made on such a claim. *Id.* The Fourth Circuit held that it was in fact a plausible reading of the statute to assume that the phrase "as modified" modifies "payment," rather than "claim." *Id.* The court stated that because the subject of "payment" was the focus of § 1322(c)(2), it is likely, "as a matter of common sense," that the modifier "as modified" was a reference to the central subject of the statute. *Id.* The court further noted that the phrase "payment" would be superfluous if the contrary reading of the statute were accepted; the court reasoned that if Congress had intended the phrase "as modified" to refer to "claim," there would have been no reason to include the term "payment" in the statute. *Id.* at 512. Congress simply could have stated that "the plan may provide for the claim to be modified" if this were its intended reading. *Id.* (internal quotation marks omitted).

After finding this alternative construction of § 1322(c)(2) one, though not necessarily the only, plausible reading of congressional intent, the *Witt* court assessed the statute's legislative history in an effort to gauge Congress's intent in the face of an ambiguous statute. The Fourth Circuit's reading of that history led the court to conclude that § 1322(c)(2) does not provide for the bifurcation and "cramdown" of undersecured, short-term home mortgages.[3]

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[3] While we need not address the legislative history of this statute, as we find its plain language unambiguous, it should be noted that

(Continued on following page)

Id. at 513-14. AGF urges us to adopt the Fourth Circuit's analysis in construing § 1322(c)(2).

We are not convinced by our sister circuit's reasoning. The *Witt* court's view that the phrase "as modified" modifies "payment," rather than "claim," is a grammatically strained reading of the statute. It contradicts the rule of the last antecedent,[4] an accepted canon of statutory construction which provides that when construing statutes, "qualifying words, phrases, and clauses are to be applied to the words or phrase immediately preceding, and are not to be construed as extending to and including others more remote." *United States v. Correa,* 750 F.2d 1475, 1481 n.10 (11th Cir. 1985) (internal quotation marks omitted). Amicus Curiae points out that had Congress intended for the phrase "as modified" to modify "payment," it could have done so by placing the modifier next to the phrase to be modified, such as through "payments as modified on the claim," or "modified payments on the claim." *Br. of Amicus Curiae Nat'l Ass'n of Consumer Bankr. Att'ys in support of Debtors-Appellees* at 13.

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other courts that have assessed § 1322(c)(2)'s legislative history have come to conclusions that differ from those of the *Witt* court. *See, e.g., In re Eubanks,* 219 B.R. at 473-78; *In re Mattson,* 210 B.R. at 160-61.

[4] The *Witt* court acknowledged that its construction of the statute was contrary to the rule of the last antecedent, but noted that use of such a rule was "not compelled." 113 F.3d at 511 (internal quotation marks omitted). The court's assessment of the context in which the modifier was used led it to conclude that the rule of the last antecedent was not conclusive in this instance. While the rule of the last antecedent is hardly a mandatory rule of statutory construction, we disagree with the *Witt* court that a compelling reason to reject it exists in this instance.

Additionally, the *Witt* court advances no convincing explanation for the meaning of the reference to § 1325(a)(5) in the text of § 1322(c)(2). As we have noted, § 1325(a)(5) is the provision that permits the bifurcation of undersecured claims into secured and unsecured components, with the unsecured component subject to "cramdown." "Payments" cannot be modified pursuant to § 1325(a)(5); only *claims* are subject to § 1325(a)(5)'s modification provisions. The reference to § 1325(a)(5) could not be a plainer statement of the statute's purpose; it is an exception to the general rule preventing the modification of claims secured by home mortgages. *See In re Mattson,* 210 B.R. at 160 ("[I]n certain limited circumstances which obtain [in § 1322(c)(2)], the debtor may in fact utilize the provisions of § 1325(a)(5) to cram down on the secured creditor . . . .").

We note that the great weight of persuasive authority supports debtors' interpretation of § 1322(c)(2); *In re Witt* appears to be the only case interpreting the statute differently. *See, e.g., In re Eubanks,* 219 B.R. at 472; *In re Sexton,* 230 B.R. 346, 349 (Bankr. E.D. Tenn. 1999); *In re Reeves,* 221 B.R. 756, 759 (Bankr. C.D. Ill. 1998); *In re Mattson,* 210 B.R. at 160; *see also Collier on Bankruptcy* § 1322.16, at 1322-51 (Lawrence P. King et al. eds., rev. 15th ed. 2001). Indeed, we have noted in dicta that § 1322(c)(2) was intended "to except short-term and balloon mortgages from [§ 1322(b)(2)'s] reach, thereby overruling *Nobelman* insofar as it applied to [those] types of mortgages." *In re Tanner,* 217 F.3d 1357, 1358 n.5 (11th Cir. 2000). The plain language of § 1322(c)(2) compels us to agree with the consensus of those courts that have considered the provision; § 1322(c)(2) permits the modification of claims (through bifurcation and "cramdown") secured by

those short-term home mortgages that mature prior to the completion of a debtor's Chapter 13 plan.

IV.

In conclusion, we find that the bankruptcy court's interpretation of § 1322(c)(2) is the correct one. The provision plainly permits the modification of AGF's claim through the bifurcation of that claim into secured and unsecured components, with the unsecured component crammed down pursuant to § 1325(a)(5). The bankruptcy court did not err in confirming Debtors' plan, based upon such a construction of § 1322(c)(2), and the district court correctly affirmed the bankruptcy court's decision. The decision of the district court is

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

IN RE:	:	**CHAPTER 13**
RICHARD W. PASCHEN and	:	
DOREEN A. PASCHEN	:	**Civil Action No. 4:00-CV-212 (HL)**
Debtors	:	

AMERICAN GENERAL FINANCE, INC.
Appellant,

v

RICHARD W. PASCHEN and DOREEN A. PASCHEN
Appellees.

ORDER

(Filed Oct. 18, 2001)

This case came before the Court on appeal from an order of the Bankruptcy Court confirming appellee/debtor's Chapter 13 plan. After reviewing the entire record in this case, reading the briefs submitted by counsel and hearing oral argument, the order of the Bankruptcy Court confirming appellee/debtor's Chapter 13 plan dated September 6, 2000 is hereby affirmed.

SO ORDERED, this 15 day of October, 2001.

/s/ Hugh Lawson
HUGH LAWSON, JUDGE

Prepared by:

William A. Edwards, Jr.
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UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

IN RE: CASE NO. 99-42771-JTL

RICHARD W. PASCHEN CHAPTER 13
SSN: 267-33-7941

DOREEN A. PASCHEN
SSN: 263-67-3718,

DEBTORS.

MEMORANDUM OPINION

(Filed Aug. 10, 2000)

American General Finance ("American General") objected to confirmation of Debtors' chapter 13 plan on the grounds of valuation and lack of good faith. American General also disagrees with Debtors' treatment of its claim under § 1322(c)(2) of the Bankruptcy Code ("Code"). After a hearing on June 22, 2000, the court took under advisement the issues related to American General's objection to confirmation. The parties have submitted briefs, and American General has stipulated as to how Debtors would testify. For the reasons that follow, the court will rule in Debtors' favor on the legal issue regarding the treatment of American General's claim under § 1322(c)(2) of the Code. The court will consider the other grounds for objection at the continued confirmation hearing scheduled for Friday, August 25, 2000 in the Bankruptcy Courtroom, 901 Front Avenue, Suite 309, Columbus, Georgia.

DISCUSSION

The parties are in agreement that Debtors' note with American General is secured solely by real estate that is Debtors' principal residence, and the final payment on that note is due before the final payment under their chapter 13 plan. Accordingly, the parties also agree that this situation is covered by § 1322(c)(2) of the Code. Section 1322(c)(2) provides:

> (c) Notwithstanding subsection (b)(2) and applicable nonbankruptcy law –
>
> . . .
>
> (2) in a case in which the last payment on the original payment schedule for a claim secured only by a security interest in real property that is the debtor's principal residence is due before the date on which the final payment under the plan is due, the plan may provide for the payment of the claim as modified pursuant to section 1325(a)(5) of this title.

11 U.S.C. § 1322(c)(2).

The parties disagree, however, as to the meaning of § 1322(c)(2). Debtor argues that § 1322(c)(2) creates an exception to § 1322(b)(2) by allowing the bifurcation and cramdown of the secured claims on certain short-term mortgages as with any other secured claim not covered by § 1322(b)(2). For support, Debtor relies on the vast majority of cases that deal with this issue. *See First Union Mortgage Corp. v. Eubanks (In re Eubanks),* 219 B.R. 468 (B.A.P. 6th Cir. 1998); *In re Sexton,* 230 B.R. 346 (Bankr. E.D. Tenn. 1999); *In re Reeves,* 221 B.R. 756 (Bankr. C.D.

Ill. 1998); *In re Mattson,* 210 B.R. 157 (Bankr. D. Minn. 1997); *In re Young,* 199 B.R. 643 (Bankr. E.D. Tenn. 1996). American General argues that § 1322(c)(2)'s language, "payment of the claim as modified," means only the *payment,* and not the claim, can be modified. In support of its position, American General relies on the Fourth Circuit case of *Witt v. United Companies Lending Corp. (In re Witt),* 113 F.3d 508 (4th Cir. 1997).

This court agrees with the reasoning of the majority line of cases, as explained in *Eubanks.* In that case, the court addressed and dismissed the rationale of *Witt:* "The cross reference to § 1325(a)(5) in § 1322(c)(2) is an unequivocal statement of congressional intent that Chapter 13 debtors are empowered by § 1322(c)(2) to bifurcate the special real estate secured claims that this new section excepts from the modification protection in § 1322(b)(2)." *Eubanks,* 219 B.R. at 473. *See also* 8 *Collier on Bankruptcy,* ¶ 1322.16 (Matthew Bender 15th Ed. Revised 2000). ("Section 1322(c)(2) thus expressly provides that certain mortgages may be modified and provided for under section 1325(a)(5).")

Similarly, this court has rejected the idea that § 1322(c)(2) only allows debtors to modify payments rather than claims: "To the contrary, the court agrees with cases finding that the application of § 1322(c)(2), which references § 1325(a)(5), allows for modification of an oversecured short-term home mortgage claim including its interest rate." *In re Leola Terrell,* Case No. 99-70556-JTL (Bankr. M.D. Ga. Aug. 20, 1999) (holding that a market rate of interest is appropriate on claims modified pursuant to § 1322(c)(2)).

This court's reasoning in *Terrell* was not limited to situations where the mortgage lender is oversecured. As the court in *Eubanks* pointed out, the phrase "provide for payment of the claim as modified pursuant to section 1325(a)(5)" plainly contemplates that undersecured claims can be bifurcated and dealt with as any other secured claim that is not secured solely by a mortgage on the debtor's principal residence. *Eubanks,* 219 B.R. at 471-72. This means the claim can be stripped down to the value of the collateral and paid at a market rate of interest.

Therefore, the court will allow American General's claim to be modified pursuant to § 1322(c)(2) as discussed above. The court will consider valuation and good faith at the confirmation hearing now scheduled for Friday, August 25, 2000 at 9:00 A.M. in the United States Bankruptcy Courtroom, 901 Front Avenue, Suite 309, Columbus, Georgia.

DATED this 10th day of August, 2000.

/s/ John T. Laney, III
JOHN T. LANEY, III
UNITED STATES
BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

I, Alyssa Ross, certify that a copy of the attached and foregoing was mailed to the following:

William A. Edwards, Jr.
P. O. Box 2273
Columbus, GA 31902

Richard E. Flowers
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Columbus, GA 31902

Jon DeLoach
Chapter 13 Trustee's Office
P. O. Box 1905
Columbus, GA 31902

Richard W. Paschen
Doreen A. Paschen
3033 W. Britt David Rd.
Columbus, GA 31909

This 10th day of August, 2000.

/s/ Alyssa Ross
Alyssa Ross – Deputy Clerk
United States Bankruptcy Court